

APPELLATE CIVIL.

Before Mr. Justice Muhammad Razi and Mr. Justice
B. S. Kisch.

1931

March, 24.

GANESHI LAL, LALA (DECREE-HOLDER-APPELLANT) v.
IMTIYAZ ALI (MINOR) AND OTHERS (JUDGMENT-
DEBTORS-RESPONDENTS).*

Civil Procedure Code (Act V of 1908), section 48—Limitation Act (IX of 1908), section 15(1)—Execution of decree stayed by order of court—Execution application filed after twelve years from date of decree—Time during which execution was stayed by order of court, if to be excluded.

Section 48 of the Code of Civil Procedure contains an unqualified prohibition, subject to exceptions contained in clause (2) thereof, against execution of certain kinds of decree more than twelve years old and is not controlled by section 15(1) of the Limitation Act, 1908; hence an application for execution of such a decree stayed by an injunction or order of Court, filed after twelve years from the date of the decree, cannot be saved from the bar under section 48 of the Code by excluding under section 15(1) of the Act the time during which execution was stayed. The period mentioned in section 48 of the Code of Civil Procedure, is not a period of limitation in the strict sense; and consequently section 15(1), Limitation Act, is not applicable to it.

Mr. Manohar Lal, for the appellant.

RAZA and KISCH, JJ. :—This is an execution first appeal arising out of a simple money decree.

The decree was passed by the Subordinate Judge, Lucknow on the 3rd of February, 1917. It was transferred to the Court of the Subordinate Judge, Bahraich for execution. The present application for execution was made on the 6th of July, 1929 more than twelve years after the date of the decree. To save the application from the bar of section 48 of the Code of Civil Procedure, it was contended on behalf of the decree-holder that the execution of the decree was

*Execution of Decree Appeal No. 56 of 1930, against the order of Babu Bhndar Chandra Ghosh, Subordinate Judge of Bahraich, dated the 31st of May, 1930.

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stayed for a period of nine months and two days from the 30th of October, 1917 to the 1st of August, 1918, under the order of a competent Court and that period should be excluded under section 15(1) of the Indian Limitation Act. This contention was overruled by the learned Subordinate Judge. He was of opinion that it is not open to the decree-holder to take advantage of the provisions of section 15(1) of the Indian Limitation Act, as section 48 of the Code of Civil Procedure contains an unqualified prohibition against the execution of such a decree and is not controlled by section 15(1) of the Limitation Act. The view taken by the learned Subordinate Judge is fully supported by the decision of a Bench of the Madras High Court in the case of *Subbarayan v. Natarajan* (1). It was held in that case that section 48 of the Code of Civil Procedure contains an unqualified prohibition subject to exceptions contained in clause (2) thereof, against execution of certain kinds of decree more than twelve years old and is not controlled by section 15(1) of the Limitation Act, 1908; hence an application for execution of such a decree stayed by an injunction or order of court, filed after twelve years from the date of the decree, cannot be saved from the bar under section 48 of the Code by excluding under section 15(1) of the Act the time during which execution was stayed. The period mentioned in section 48 of the Code of Civil Procedure, is not a period of limitation in the strict sense; and consequently section 15(1), Limitation Act, is not applicable to it. The appellant's learned Counsel had argued, with reference to section 29 of the Indian Limitation Act that the Code of Civil Procedure should be taken to be a special law. In our opinion this contention is not well-founded and must be overruled. The learned Counsel has not been able to refer to any authority in support of his contention. In our opinion the view taken in the Madras case is quite correct and must be accepted.

(1) (1922) I.L.R., 45 Mad., 785.

We can find no ground for interference and dismiss the appeal. The respondents are absent though sufficiently served.

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Appeal dismissed.

FULL BENCH.

Before Syed Wazir Hasan, Chief Judge, Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

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March, 25.

MOHAMMAD IBRAHIM AND ANOTHER (DEFENDANTS-APPELLANTS) v. ZAHUR AHMAD, PLAINTIFF AND ANOTHER DEFENDANT (RESPONDENTS).*

Oudh Laws Act (XVIII of 1876), section 13—Claim of pre-emptor and position of vendee, how to be determined—Co-sharership of pre-emptor only at the date of sale, if sufficient—Words “entitled to a right of pre-emption” in section 13, meaning of.

In a suit for pre-emption the claims of the pre-emptor must be determined with reference to the position of his co-sharership not only at the date of sale but also at the date of suit and the position claimed by the vendee must be determined only with reference to his position as a co-sharer at the date of sale.

The words “entitled to a right of pre-emption” as used in section 13 of the Oudh Laws Act, 1876, must be construed as meaning “entitled at the date of suit”. This is the only construction consistent with the general principles and there is nothing in the language of section 13 to justify the interpretation that a person entitled to a right of pre-emption at the date of sale may bring a suit to enforce such right even after he has ceased to be so entitled. Both on the ground of principle and also on the terms of section 13 of the Act, the plaintiff in a suit for pre-emption must show that he possessed necessary qualifications not only at the date of sale but also at the date of the suit. *Gaya Prasad v. Faiyaz Husain*

*Second Civil Appeal No. 308 of 1930, against the decree of M. Ziauddin Ahmad, Subordinate Judge of Sultanpur, dated the 27th of August, 1930, reversing the decree of Pandit Shiam Manohar Tewari, Munsif, Musafirkhana at Sultanpur, dated the 10th of April, 1930.